

The Honorable Michelle L. Peterson
Noted for Friday, October 7, 2022

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NANNETTE BASA,

Plaintiff,

v.

BRAND SHARED SERVICES, LLC,

Defendant.

No. 2:21-cv-00754-MLP

SUPPLEMENTAL DECLARATION OF
ALEX J. HIGGINS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SANCTIONS

I, Alex J. Higgins, am one of the attorneys for the plaintiff in the above-entitled matter. I am over the age of 18 and am competent to testify regarding the matters discussed below. I make this declaration based upon personal knowledge. I swear that the following is true and correct under the penalty of perjury. The paragraph numbers and exhibit numbers continue from the first declaration I filed in support of this motion at Dkt. 31.

12. We started this case focusing on a layoff decision that Brand defended based on a claim that Basa did not want to do recruiting and had been offered a job as a recruiter but had turned it down, and was therefore selected for layoff. *See, e.g.*, Interrogatory Answer No. 6 (Attached as **Exhibit 10**). This did not appear to be a performance-related termination. At Riapos's deposition in June 2022, she announced for the first time that Basa's allegedly poor performance was the reason for the layoff. Brand had not communicated that to Basa, nor created any documentation of the alleged performance issues. This surprising development

1 caused a massive broadening of discovery because we were forced to ask for more documents
2 and find (or depose) every person identified by Brand as a witness to the performance issues.

3 13. Attached as **Exhibit 11** are excerpts of Brand’s second supplemental answers
4 and objections to Plaintiff’s third discovery requests.

5 14. Attached as **Exhibit 12** are excerpts of the deposition of Rod Broschinsky,
6 taken on September 13, 2022.

7 15. Attached as **Exhibit 13** is an email exchange between Karen Riapos and Meg
8 Newman, last dated September 23, 2020. It was produced in discovery by Brand with the
9 bates number BRAND001637-38.

10 16. Despite many emails and discussions about the failure to produce any text
11 messages, only now—for the first time—does Brand contend that Riapos testified
12 “mistakenly” at her deposition. (Notably, Riapos reserved signature on her deposition yet
13 made no corrections on the errata sheet—confirmed by the court reporter by an email attached
14 as **Exhibit 14**.) We had been asking about these missing text messages beginning on June 3,
15 2022—immediately after Riapos’s deposition. In addition to discussions, we emailed defense
16 counsel about the missing text messages on June 3, June 10, June 21, June 30, and August 3
17 (when this item was added to a FRCP 37 Conference agenda). Throughout the depositions, we
18 asked every witness about use of text messages and preservation. Even during the October 3
19 discovery conference ordered by the Court, Brand’s counsel did not suggest that Riapos
20 “mistakenly” testified at her deposition.

21 17. Riapos’s new story raises more questions, such as exactly when she searched
22 her phone “before her deposition.” In discovery conferences, Brand’s counsel has refused to
23 disclose when Riapos searched, claiming privilege.

24 18. Attached as **Exhibit 15** are excerpts of the text exchanges between Basa and
25 Broschinsky that were produced by Basa during discovery.

1 SIGNED this 7th day of October, 2022, at Seattle, Washington.

2 s/Alex J. Higgins
3 Alex J. Higgins, WSBA No. 20868
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